The Solicitors' Journal

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CURRENT TOPICS

Amendment of Certificates for Legal Aid

FURTHER tightening of the Legal Aid Scheme so as to ensure that legal aid should be available only where there is genuine need appears in Notes by the Council of The Law Society for the guidance of Area and Local Committees, published in the February issue of the *Law Society's Gazette*. They state that local secretaries should not issue a certificate where there is a patent error in the National Assistance Board's determination of the maximum contribution (for example, where there is no disposable capital and the maximum contribution as determined does not equal half the difference between £156 and the disposable income in excess of that sum) but should take the matter up with the National Assistance Board as soon as possible after the determination has been received. Where the Board makes a redetermination the committee should normally consent to an increase of the maximum contribution unless the certificate has been issued and proceedings commenced. If the certificate has been issued and negotiations are pending the committee should amend the certificate except in cases of hardship. They have power to amend the certificate when the alteration involves an increase or decrease in the disposable income of the assisted person of an amount greater than £52, or an increase in the disposable capital of an amount greater than £75.

Legal Aid and Advice Act, 1949: Counsel's Fees

IN Notes No. 2 on the Legal Aid and Advice Act, 1949, issued by the General Council of the Bar for the information and guidance of the Bar (February, 1952), the Council state their view that, whilst the lapse of three to four months between the disposal of a case under the Act and the payment of fees cannot be considered unreasonable, a period of six months or more is *prima facie* a case for investigation. They ask members of the Bar to send them confidential information, not for the purpose of casting reflections but to assist the better working of the scheme as a whole. The request does not relate to cases conducted through the Divorce Department of The Law Society. Another matter concerning solicitors which is dealt with in the notes is the important question of the disallowance of counsel's fees, e.g., for settling petitions and advising on evidence in matrimonial causes. The Council stress the importance of speed in refuting a complaint as to unfair taxation, and it is stated that counsel's clerk should, when submitting a list of fees, request instructing solicitor's clerk to inform him as soon as the taxation is completed in the event of the taxing officer having either (*a*) completely disallowed a fee, or (*b*) reduced a fee of two guineas to one guinea, or (*c*) made any other reduction of a substantial nature. As regards the disallowance of brief fees, it is only after there has been an unsuccessful objection to the taxation that the matter should be reported to the Council, and the notes set out for the information of counsel a notice which appeared in the *Law Society's Gazette* for August, 1951, with regard to the need for prompt notification by solicitors to counsel where on taxation there is an appreciable reduction.

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Fraudulent Applications for Legal Aid

ACCORDING to an article in the *Daily Express* of 31st January, The Law Society is planning an alteration in the form of application for legal aid so as to make the way of the fraudulent applicant harder. The form will ask, it was stated, "What is the highest amount you have earned in the last twelve months?" It said that some applicants make fictitious transfers of money so as to make their disposable capital appear less than it is. Another case, the article disclosed, occurred where a person who had free legal aid owned a car and a television set. Two of four men who sold "export-only" pottery worth £13,000 at a profit of 50 or 100 per cent. had free legal aid. This was rightly described by BYRNE, J., as an amazing state of affairs. Abuse of the scheme is, perhaps, inevitable, and where there are loopholes they should be closed. The assessment of contributions is easy to criticise. Indeed, it has been said by some that the assessment of contribution from the litigant is in many cases too high, but it can never be an easy matter to decide how much financial aid a litigant needs, and it is even more difficult to detect fraud whenever it occurs. Another criticism was recently made by His Honour Judge BATT, sitting as Divorce Commissioner at Manchester. A husband who, the Commissioner said, was largely responsible for the breakdown of his marriage only contributed £25 towards his own legal aid, and the woman with whom he was living was going to start proceedings against her husband, and that would probably cost the community £50 to £60. "I find it difficult to make much sense out of all that," commented the Commissioner. The answer to this by Mr. T. G. LUND, Secretary of The Law Society, was quoted in the article. He said: "The object of legal aid is to avoid the suggestion that any man should be deprived of a legal remedy in the courts through lack of means. Therefore, so long as marriage may be dissolved although there are irregular unions, there does not appear to be any reason why the public should not take advantage of the Legal Aid Act to enable them to bring their proceedings if they are properly within the scope of the Act."

Solicitors and Divorce Practice

DURING the hearing of undefended divorce cases at the Bradford Divorce Court on 29th January, Sir REGINALD T. SHARPE, the Commissioner, criticised some of the firms of solicitors in reference to their work in preparing the cases for trial. He mentioned lack of care in checking discretion statements, delay in preparing cases, and lack of care in copying a petition. In one case he at first decided to award no costs for the copying of a petition, as a wrong address had been given in the original. Later he decided to revoke this decision, but added that the solicitors must "watch this thing in future." In another case, which lasted thirty-five minutes, Sir Reginald said that solicitors who thought that undefended cases would last more than fifteen minutes ("50 per cent. more than usual") would have their cases moved to the end of the day's list. It seems to have been an unfortunate day for some who practised in the Bradford court, but in defence of solicitors it is fair to point out that for over a quarter of a century they have been doing a large part of the divorce work of the country without charge and largely at their own expense, and that The Law Society's scheme under the Legal Aid Act provides, at a time when prices, wages and salaries are rising, for an abatement in legal fees. These things should be remembered if minor typing errors or other human slips are discovered in pleadings. Most experienced practitioners know that the divorce work of this country has been done efficiently and well, as the many compliments received from the highest quarters testify. If occasionally a solicitor finds it difficult accurately to forecast the length of a case, this is a difficulty which he shares with the Bench.

Solicitors' Charges

THE Secretary of The Law Society has written to the Secretary of the Incorporated Society of Auctioneers a letter, published in the February issue of the *Incorporated Auctioneers' Journal*, relating to solicitors' charges when acting for both vendor and purchaser. He wrote that he had been asked by the Council to write with a view to clearing up any misconception. Vendors and purchasers writing to The Law Society, Mr. LUND wrote, frequently say they have been misled by statements made to them by surveyors, valuers or estate agents to the effect that the legal charges would be reduced if the same solicitors acted for both parties. He said that solicitors have a certain amount of latitude in reducing their charges (whether they are acting for both parties or not), but it is not true that solicitors make a practice of reducing their charges merely because they happen to be acting for both parties. Solicitors are, in such circumstances, entitled to make the full scale charge against each party. Mr. Lund added that he was sending a similar letter to the secretaries of the other principal bodies representing surveyors, valuers and estate agents.

Counsel's Opinion and the Two-Thirds Rule

THE General Council of the Bar have put forward the suggestion that, in cases where junior counsel (*a*) has advised in conference and subsequently attends a consultation at which a leader is asked to advise on the same facts and charges a special fee therefor, or (*b*) attends such a consultation not having previously advised in conference on the facts considered at the consultation, it is the usual practice, in the absence of any special arrangement, for his fee to be two-thirds of that paid to the leader. The Council of The Law Society, in the February issue of the *Law Society's Gazette*, ask individual members to send their views on the question whether this is the usual practice to the Secretary, Law Society's Hall, Chancery Lane. Under the two-thirds rule, they state, a junior briefed in a High Court action is entitled to a fee equal to two-thirds of that allowed to his leader, provided that the leader's fee does not exceed 150 guineas. In cases where the leader's fee exceeds that amount, the Council state that the two-thirds rule does not extend to the excess. The courts have not applied the two-thirds rule to opinions.

The Notification of Vacancies Order, 1952

THE Notification of Vacancies Order, 1952 (S.I. 1952 No. 136), which comes into operation on 25th February, 1952, will, subject to certain exceptions, prohibit persons seeking to engage employees from doing so otherwise than by notifying to a local office or a scheduled employment agency particulars of the vacancy to be filled. It will also prohibit persons from engaging employees, subject to the exceptions, unless they are submitted for employment by a local office or scheduled employment agency. Advertising a vacancy will be permitted if the advertisement states that applicants are required to make their applications to a local office or scheduled employment agency. Resumptions of engagement following sickness of an employee or stoppages due to a trade dispute, or within not more than fourteen days after termination of the employment by the same employee, will be permitted. Agricultural and coal-mining workers, registered dock workers, merchant seamen, shipmasters and fishing-boat masters and crews

within the Merchant Shipping Acts, members of police forces for areas scheduled in the Police Act, 1921, or maintained under a scheme under the Police Act, 1946, or under the Police (Scotland) Act, 1946, members of fire brigades maintained pursuant to the Fire Services Act, 1947, managerial, professional, administrative and executive employees, part-time employees performing not more than thirty hours' weekly service, unpaid employees and casual employees employed otherwise than for the employer's trade or business, are excepted from the application of the order. It applies in respect of workers aged between eighteen and sixty-four (inclusive) in the case of men and eighteen and fifty-nine (inclusive) in the case of women, but it does not apply to the engagement of certain workers, e.g., women who have living with them children of theirs aged under fifteen years and workers covered by a permit or exemption certificate.

Magistrates' Courts Committees

MAGISTRATES' courts committees were set up in England and Wales on 1st February under the Justices of the Peace Act, 1949, for each county and county borough. The Act empowers the Home Secretary to allow a non-county borough having a separate commission of the peace and a population of 65,000 or more to establish its own committee, and committees have been granted to Cambridge, Hove, Luton, Poole and Stockton-on-Tees; applications from the other three boroughs who are qualified by size for a separate committee—Chesterfield, Newcastle-under-Lyme and Swindon—are under consideration by the Home Office. The members of the committees are justices of the peace, and they are responsible for the administration and staffing of the magistrates' courts in their areas, for arranging courses of instruction for justices of the peace, and in counties for reviewing the division of the county into petty sessional divisions. Most of the changes which will be brought about by the committees will not take place until 1st April, 1953, and in the meantime they will have the task of reviewing the needs of their areas. Home Office circular No. 21/1952 was issued on 29th January, 1952, with a memorandum about the functions of magistrates' courts committees and the councils of counties and of boroughs with separate commissions of the peace during the interim period between 1st February, 1952, and 31st March, 1953. The memorandum deals with the expenses of the committees, the reorganisation of petty sessional divisions of counties, the appointment of justices' clerks, the limitation on justices' clerks acting in licensing matters, the employment of staff for justices' clerks, the salaries of justices' clerks and staff employed by the committees, salaries and expenses in connection with clerkships to non-county borough justices and questions of accommodation, including the office provided for a justices' clerk.

Illegitimate Children and the Law

A REPORT by a joint committee appointed by the Magistrates' Association and the British Medical Association, and published by the latter on 1st February, advocates that a government inquiry be instituted on the subject of the legislation affecting illegitimate children. It proposes that the allowances for maintenance ordered by magistrates' courts should be increased to correspond with those for other children, and that provisions should be made for extending compulsory payments beyond the age of sixteen when children are continuing education or training. In too many cases, the report states, unmarried mothers have to maintain these children without assistance from the fathers or other source. Child neglect might often result from overwork and poverty of the mother. The proposals in the report received the unanimous approval of the British Medical Association, but the Council of the Magistrates' Association state that the association is not necessarily committed to all the views expressed.

Two Bills

TWO private members' Bills, the texts of which were published on 8th February, deserve special consideration in debate. One is the Crown Lessees (Protection of Sub-tenants) Bill, presented by Mr. AUSTIN HUDSON, for the purpose of extending Rent Act control and protection to sub-tenants of Crown property. This is one of the most glaring anomalies of the control and it is not surprising that its abolition is supported by members of all political parties. The Loss of Employment (Compensation) Bill, presented by Mr. E. HYND, defines long service as not less than five years, and aims at providing compensation for loss of employment after such service, with certain exceptions. This Bill has the support of the National Federation of Professional Workers. The practical and vital question, however, in relation to this Bill in our straitened times is how is the compensation to be provided?

Felling Licences

AT the request of the Forestry Commission the Council of The Law Society, in the *Law Society's Gazette* for February, draw attention to the fact that the Forestry Act, 1951, forbids, with certain exceptions, the felling of trees without a licence from the Forestry Commission. Such a licence may impose conditions for securing the restocking of the land with trees or the stocking of other land. Normally from three to five years after felling are allowed for such planting or replanting. The Commissioners would require the young trees so planted to be properly maintained for a period not exceeding ten years. Where the land to which the conditions relate changes hands and the conditions have not been complied with, enforcement action may be taken against the owner of the land; the conditions attaching to a licence become a burden on the land and should therefore be disclosed by the owner when disposing of the land to which such conditions relate.

Institute of Advanced Legal Studies

THE fourth annual report (1st August, 1950, to 31st July, 1951) of the Institute of Advanced Legal Studies, which has just been published, records that the total holding of books at the end of July, 1951, was 25,915—an increase of 8,631 over the year before. The number of readers during the fourteen months' period August, 1950–September, 1951, was 161, an increase of eleven compared with the previous twelve months. At its first meeting of the session, the committee passed a resolution of appreciation of LORD MACMILLAN'S services as the first Chairman of the Committee of Management of the Institute. They also record with much pleasure that Sir NORMAN BIRKETT, who joined the committee at the beginning of the session, accepted their invitation to succeed Lord Macmillan as chairman, and that Sir RAYMOND EVERSHED, Master of the Rolls, agreed to serve on the committee. The committee learned with great regret of the death in July, 1951, of Professor Harold Potter, who had been a member of the Committee of Management since the institute's foundation. They express their gratitude for the help they have had from Professor VESEY-FITZGERALD, who left the committee on retiring from the Chair of Oriental Laws in the University. Mr. H. A. C. STURGESS, Librarian and Keeper of the Records of the Middle Temple, joined the library sub-committee during the session.

A Conveyancer's Diary

RECOVERY OF TAX ON TAX FREE ANNUITY

UNDER s. 34 of the Income Tax Act, 1918, a taxpayer who has sustained losses in his business may, in certain circumstances, obtain relief by way of repayment to him of tax paid in respect of other items of his income during the period during which the losses were incurred. If one of those items of income is an annuity payable to the taxpayer by trustees free of income tax, the tax so recovered may include tax paid in respect of that annuity; and the question then arises whether the taxpayer is entitled to keep the tax so recovered, or whether it should be accounted for to the trustees. In *Re Lyons* [1951] Ch. 1093, recently affirmed by the Court of Appeal ([1951] 2 T.L.R. 1256; see p. 28, *ante*), the answer given was that any tax recovered under s. 34 in respect of a "tax free" annuity should be accounted for to the trustees who paid the tax on the annuity, and this decision is a logical extension of the principle on which what is commonly known as the rule in *Re Pettit* [1922] 2 Ch. 765, is based; but it does nevertheless show how artificial in some respects that rule is.

The trouble is that there is in reality no such thing as a "tax free" annuity. This is clear from a passage in the speech of Lord Maugham in *Inland Revenue Commissioners* v. *Cook* [1946] A.C. 1, where, speaking of annuities given by will, he said (at p. 10) that ". . . it is apparent that a named annual sum cannot literally be given free from income tax, since the annuitant must normally pay income tax on his or her income, and what has sometimes been called a benevolent construction had to be applied if the plain intention of the will was to be carried out. That intention could be achieved by the simple means of holding that the testator must have intended to give, in addition to the fixed annuity, such a sum as would enable the trustees in each year to discharge the income tax on the total amount of the fixed annuity and the additional sum and to pay the balance, which in the normal case would be the exact amount of the stated annuity, to the annuitant. Unless there is something special in the language of the will which prevented that construction being adopted, that became the recognised construction in cases of gifts of annuities of fixed amounts free of income tax both in England and Scotland." Gifts of annuities by instrument made *inter vivos* are, of course, not subject to any benevolent construction, and if it is desired to create by instrument *inter vivos* an annuity in such a manner as to confer on the annuitant the right to receive a net sum after deduction of tax, it is necessary, as is well known, to use the correct formula, whereby what is given is not expressed simply as an annuity of £*x* free of tax, but such an annuity as after deduction therefrom of income tax at the standard rate will leave the clear annual sum of £*x*.

That much is well established, but what is the real effect of that word "clear"? In the ordinary case, the annuitant is entitled to certain reliefs in respect of his total income tax liability, these reliefs including the personal allowance, similar allowances in respect of wife and children and dependent relatives, and allowances on life insurance premiums paid by the taxpayer in the year of assessment, and these allowances are made in respect of his total income. It was held in *Re Pettit* that an annuitant in receipt of a "tax free" annuity is accountable to the trustees (who have paid the tax in respect of his annuity) for a proportion of the sum recovered by him by way of these reliefs equivalent to the proportion which the annuity bears to the annuitant's total income. Under this rule an annuitant in receipt of a "tax free" annuity of £100 whose total income for the financial year in question is £200, having been allowed a personal allowance of £110, would be required to account to the trustees who paid him the annuity for a proportion of this allowance which is not merely half the amount thereof, but a proportion equivalent to that borne by the amount of the annuity plus the tax paid thereon to the remainder of the annuitant's income; and the trustees then hold this sum for the benefit of those interested in the trust fund after payment of the annuity. To quote again from the speech of Lord Maugham in *Inland Revenue Commissioners* v. *Cook*, *supra*: ". . . the amount of the annual benefits given on the true construction of the will to the annuitant was £100 plus the sum which might ultimately prove to be payable by her for income tax for that year, so as to leave £100 for her personal behoof. In other words, the annuity given to her was an amount equal to £100 plus an amount, say £*x*, varying from year to year and liable to exemptions and abatements. The £*x* is none the less a constituent of her income because it may vary from year to year and (if payable) has to be paid in discharge of her income tax. The fact that the value of £*x* is unascertainable until after the end of the year, when the deductions for abatements and exemptions, if any, will be ascertained, does not occasion any practical difficulty" ([1946] A.C., at p. 12).

The effect of a gift of a "tax free" annuity, whether given by will or, if the appropriate formula is used, by instrument *inter vivos*, is thus twofold, i.e., such a gift comprises the gift of the net amount itself and the gift of the amount required to pay the ascertained tax in respect of the net amount. This latter constituent of such a compound gift has the effect, as Uthwatt, J., pointed out in *Re Williams* [1945] Ch. 320, of an indemnity against tax. But although the annuitant, on this principle, is not entitled to keep the whole of his reliefs, the whole of the tax payable in respect of his "tax free" annuity is treated as his income for certain purposes. It is so treated for the purpose of calculating the total reliefs to which the annuitant is entitled (*Re Williams*, *supra*, at p. 321), and also for the purpose of assessing his liability to sur-tax (cf. *Re Pettit*, *supra*, at p. 770). It was on this latter circumstance that counsel for the annuitant in *Re Lyons* principally relied when he argued that the annuitant was entitled to retain for his own use the tax repaid to him under s. 34 of the Income Tax Act, 1918; if the amount of the tax paid by the trustees on the annuity was returnable as part of the annuitant's total income, then on its repayment to him under s. 34 it should be treated in fact as part of his income. It was conceded, however, that the proportion of the tax attributable to the reliefs which the annuitant might have claimed had he not established a case for a larger relief under s. 34 was payable to the trustees who had paid the tax in respect of the annuity, under the rule in *Re Pettit*, and doubtless this concession was forced upon the annuitant by the decision in *Re Kingcome* [1936] Ch. 566, where it was held, in effect, that an annuitant in circumstances such as existed here is under a fiduciary obligation to recover and pay over to the trustees the appropriate proportion of the reliefs allowed to him which fall within the rule in *Re Pettit*. But this argument could not stand if the principle on which *Re Pettit* was decided is correct. If the "indemnity" view of this principle is accepted, the burden against which the indemnity had been provided by the donor of the annuity did not arise in the year in which the annuitant, by reason of his successful invocation of s. 34, had in effect paid no

income tax at all, and the trustees were thus entitled to repayment from the annuitant of the whole of the tax paid by them in respect of the year in question on the annuity.

Logically, there is no answer to this extension of the principle of *Re Pettit* from the case of one type of tax allowance to the case of another essentially similar type of tax allowance; but it will have been observed that, before the principle in *Re Pettit* can be held to be applicable in any given case, it is necessary to ascertain whether the case is one that, on construction of the instrument in question, admits of such application; that is clear, I think, from the observations of Lord Maugham in *Inland Revenue Commissioners* v. *Cook*, quoted above. It is possible to create a "tax free" annuity in such language as to enable the annuitant to retain for his own benefit the proportion of reliefs which, on the *Re Pettit* principle, he should hand over to the trustees (see *Re Jones* [1933] Ch. 842). That case has not been followed in any reported case decided since then, and the tendency is to regard it as standing on its own; but even if the construction which was there put upon the language in which the testatrix clothed the gift of certain annuities ("such an annuity as after deducting therefrom income tax at the current rate for the time being would amount to the clear yearly sum of "£x) would not, perhaps, be adopted if the case had to be decided *de novo* to-day, it is clearly possible for a donor to adopt a formula which would have the effect of exonerating the annuitant from any liability to account for tax reliefs on the *Re Pettit* principle. If that should happen, any relief obtained under s. 34 of the Income Tax Act, 1918, by an annuitant enjoying a "tax free" annuity under such a gift would fall to be dealt with, not in accordance with *Re Lyons* (which, as has been seen, is only an extension of *Re Pettit*), but in accordance with *Re Jones*. Such an eventuality may not be very likely, but given the extremely wide variation of language which can be used in framing the gift of a "tax free" annuity, it is not at all impossible. It should not be forgotten, therefore, that *Re Lyons* is not a case of universal application.

"A B C"

Landlord and Tenant Notebook

SEALING AND ITS EFFECT

TOWARDS the end of last year, the Supreme Court twice had occasion to consider the present law with regard to documents under seal, and it so happens that in each case an action between landlord and tenant afforded the opportunity.

The particular point (there were others) in *Stromdale & Ball, Ltd.* v. *Burden* [1951] 2 T.L.R. 1192 was whether the defendant had duly executed a deed which she had signed without placing or having placed a finger on the wafer which, Danckwerts, J., found, was certainly there when her solicitors sent it to the plaintiffs' solicitors, and must be considered to have been there when she signed it. The deed was a "deed of licence" by which the defendant, (mesne) lessor under a seven-year lease, gave the (apparently) required consent to an assignment by the grantees to the plaintiffs; but, as the result of negotiations between the parties' solicitors, it substituted for a right to first refusal of the fee simple (which the defendant did not own) contained in the lease an option to purchase her interest. The plaintiffs had exercised this option, and sued upon it; the main defence may be said to have been that the defendant had not been aware of the provision when she signed, which failed because there was no evidence of mutual mistake. Dealing with the point with which this article is concerned, the learned judge said: "Time was when the placing of the party's seal was the essence of due execution; signature was not, indeed, necessary to make a deed valid . . . But, with the spread of education, the signature became of importance for the authentication of documents, and since 1925 has become essential by reason of the provisions of s. 73 of the Law of Property Act, 1925. Meticulous persons when executing a deed may still place their finger on the wax seal or wafer on the document, but it appears to me that, at the present day, if a party signs a document bearing wax or wafer or other indication of a seal, with the intention of executing the document as a deed, that is sufficient adoption or recognition of the seal to amount to due execution as a deed." This decision was discussed at p. 57, *ante*, and there is only one remark that may be added: If the point be ever taken in a higher court, it may be objected that what is lacking in such circumstances is not adoption or recognition, but delivery. In answer to which it may well be suggested that when the signatory says, "I deliver this as my act and deed," what he is really doing is adopting or recognising, the important word being "as"; he does not deliver by saying that he delivers; he delivers and describes what he is delivering.

In the other case, *Mitas* v. *Hyams* [1951] 2 T.L.R. 1215 (C.A.), the vital issue was whether effect could be given to an oral variation of a lease under seal. The document made the rent payable quarterly in advance, the days being the 17th of May, August, November and February. In November, 1949, the parties verbally agreed to make rent payable on the usual quarter days, and the defendant, instead of paying a full quarter's rent for the period 17th November, 1949, to 17th February, 1950, paid a (presumably) apportioned amount for the period 17th November to 25th December, 1949. The receipt given by the plaintiff recited the fact that as from 25th December, 1949, rent would be payable in advance on the usual quarter days. But when Lady Day, 1950, arrived a dispute had arisen whether the lease had been surrendered or not; by way of testing this, the plaintiff sued for rent, but phrased his claim as one for a quarter's rent due in advance on 17th February, giving credit for an apportioned amount received for the period from then till 25th March. The county court judge held that the plaintiff could not claim that rent had fallen due on 17th February.

The Court of Appeal upheld him. Judgments were delivered by Somervell and Denning, L.JJ., but the former was content to say that in the circumstances the oral agreement which had been acted upon was binding on the parties; the learned lord justice did, however, qualify the agreement as a very reasonable arrangement, because one would remember the usual quarter days more easily than 17th August, and so on. Denning, L.J., went more deeply into the legal position, referring to the fusion of law and equity as the event which enabled the court to give effect to a document which was not under seal varying one which was; but, it was clear, provided one of two things have happened: either the agreement must be evidenced by writing or it must have been partly performed. In the case before the court, both had happened, and Denning, L.J., referred to *Central London Property Trust, Ltd.* v. *High Trees House, Ltd.* [1947] K.B. 130, as authority for the proposition that the absence of consideration (and he considered that there was no consideration for the agreement in the case before him) did not matter if the

agreed variation had not only been evidenced by writing and acted on but had been intended to be acted on.

Without suggesting that Somervell, L.J.'s description of the new agreement as a very reasonable arrangement conflicts with Denning, L.J.'s proposition that there was no consideration to support it, it may be said that both pronouncements may be subjected to some criticism. Many of us must have felt that the "usual quarter days" system is not particularly reasonable. Apart from the circumstance that the "quarters" vary in length, one peculiar incident of the arrangement is that in strict law (and here equity cannot interfere) a tenant may either have to pay a gale of rent on Christmas Day or risk being awakened just after dawn on Boxing Day and then opening the door to a certificated bailiff who quickly inserts his foot between door and doorpost and produces a distress warrant. This applies to forehand rent as it does to rent payable in arrear (*Lee* v. *Smith* (1854), 9 Exch. 662), while payment before quarter day has been shown to be fraught with some danger: if the landlord should assign his interest (or should be adjudicated bankrupt, or should die) before that day the tenant may be called upon to repeat the payment (*De Nicholls* v. *Saunders* (1870), 22 L.T. 661). Admittedly since the fusion of law and equity courts have shown themselves anxious to find an agreed variation of the tenancy, acted upon, in such circumstances; the above-mentioned *Central London Property Trust, Ltd.* v. *High Trees House, Ltd.* (rent reduced owing to war), gave us a striking illustration of this; nevertheless, on the whole, the reasonableness of the "four usual quarter-days" arrangement is arguable.

The question whether no consideration supports such agreements to vary as the one examined is perhaps too academic to be gone into at great length in this "Notebook." Those interested will find cogent arguments supporting his proposition in an article written by Denning, L.J., himself, in the current number of the *Modern Law Review*. All I would respectfully suggest is that, as on such an occasion rights are given up as well as acquired, something might be said in favour of the view that there is consideration. Thus it is true that the plaintiff received less on 17th November, 1949, than he would have received if he had not entered into the new agreement; on the other hand he acquired a right to a payment on 25th December of that year which the old lease had not given him. And it does not appear to have been part of his case that the new agreement was void for want of consideration.

These two decisions show, of course, that it is easier to fulfil the requirements of sealing, and also easier to lessen its effects, than formerly; and in landlord and tenant matters, incidentally, many may regret the blurring of the line of demarcation between leases and tenancy agreements; every statute affecting this part of the law nowadays is at pains to state that for its purpose "lease" includes "tenancy agreement" (the complaint may perhaps be answered, as in *Bridgland* v. *Shapter* (1839), 5 M. & W. 375, Abinger, C.B., held that "lease" might be applied to a parol demise). But, despite the demonstration of the effect of the fusion of law and equity given by *Walsh* v. *Lonsdale* (1882), 21 Ch. D. 9 (C.A.), a deed under seal may be insisted upon by statute, as in the case of the Settled Land Act, 1925, s. 42; and apart from such phenomena, a landlord may find himself unable to sue on an unexecuted agreement in a county court (*Foster* v. *Reeves* [1892] 2 Q.B. 255 (C.A.)).

R. B.

HERE AND THERE

A NEW REIGN

It will be a little while before common use renders us unconscious of a faint, far echo of the nineteenth century when we hear of "Queen's Counsel" and the "Queen's Bench Division," expressions evoking legendary figures like Lord Russell, C.J., Hawkins, J., and Sir Edward Clarke, Q.C., calling up visions of battles long ago, the Baccarat Case and the Tichborne Claim. One of the daily papers has been amusing itself fitting the familiar figures of Lord Simonds, L.C., *et alios*, our notable contemporaries, into a rather doubtful Elizabethan fancy dress. It would be somewhat nearer the mark to measure them against the giants (were there, by the way, really giants in those days?) of the second half of the nineteenth century, the great Victoria's England. There was a time when, on the death of the Sovereign, the Government of the realm was suspended and the King's Peace ended. Parliament was dissolved and the judges of England with all other civil and military officers were deprived of that royal authority whereby they exercised their functions, their offices being automatically vacated. Gradually, as the eighteenth and the nineteenth centuries advanced, it was found possible to modify the administrative inconveniences of so sudden and complete a break. Thus it was, under George III, by the influence of Lord Bute, that the judges were secured in their offices irrespective of a demise of the Crown. Dr. Johnson did not approve and it is worth recalling exactly what he said: "There is no reason why a judge should hold office for life more than any other person in public trust. A judge may be partial otherwise than to the Crown; we have seen judges partial to the populace. A judge may become corrupt and yet there may not be legal evidence against him. A judge may become froward from age. A judge may grow unfit for his office in many ways. It was desirable that there should be a possibility of being delivered from him by a new king." (It is remarkable how often Johnson rings the bell.) But the preference for continuity and a smooth take-over prevailed more and more over the idea of a clean sweep, a new page and a fresh start. A variety of statutes gave piecemeal effect to the preference till the final stage was reached when the Representation of the People Act, 1867, ensured that Parliament should live though the Sovereign died, and the Demise of the Crown Act, 1901, enacted that the holding of any office under the Crown should not be affected nor should any fresh appointment be rendered necessary by the demise of the Crown.

THE GREAT SEAL

One of the first tasks of the new reign will be the design and manufacture of a new Great Seal, which incidentally is not a signet but the combination of two heavy silver plates in one of which is cut the impression for the front of the device and in the other that for the back. The process of sealing, I understand (this is hearsay and not *chose vue*), is to soften a large chunk of wax in warm water and press it between the two plates. The resultant disc is attached to the document by a tape, one end of which is embedded in the wax. The old Seal will be used until the new one is ready and will then be demasked (i.e., ceremonially put out of action by a light blow from a hammer) and, if politics have not changed their complexion in the meantime, presented to Lord Simonds. And suppose, by any chance, there should be someone else on the Woolsack by then? Well, that's happened before, so no one will be puzzled. After the accession of William IV there were rival claims to the perquisite by Lord Lyndhurst, who was Lord Chancellor when the new Seal was ordered, and Lord Brougham, who had succeeded him by the time it was finished. The King resolved the contest in the manner of Solomon, awarding one half to

each and, in his hearty naval way, bidding them cry heads or tails for the upper or lower portion. He then directed each part to be set in a splendid silver salver. The same thing happened again under Queen Victoria, for in the course of her long reign the Great Seal, worn out with hard use, was renewed no less than four times. The replacement of 1859–60 coincided with a change of Government which substituted Lord Campbell for Lord Chelmsford as Lord Chancellor, and the Queen strictly followed the precedent set by her uncle and predecessor, all but the tossing up, of course. The same situation very nearly arose in March, 1938, when, King George VI's new Great Seal being finished, Lord Hailsham became the owner of the disused one. A few days more and he would have had to share it with Lord Maugham.

VICISSITUDES OF THE SEAL

THE almost mystical reverence with which the Great Seal is regarded by the lawyers has not preserved it at different times from mishaps of one sort or another. It has been broken into pieces by revolutionaries under Charles I. It has been thrown into (I think) the Severn by the young Charles II after his defeat at Worcester. It was thrown into the Thames when James II was abjuring the realm, but was accidentally retrieved from the waters in a fishing net. It was stolen by burglars from the house of Lord Thurlow, though a passable substitute was ready for use next day. It was buried in a flower bed by Lord Eldon for safety during a fire and, since in the hurry he had not marked the spot, the entire household had to dig desperately all over the garden to find it again. It has even been used in a variation of "hunt the slipper" when, Lord Brougham having taken it to a house-party in Scotland, the young ladies managed to slip it out of his custody and hide it in a tea-caddy, making him search for it blindfold guided only by loud or soft playing on the piano. The King, when apprised, was not amused.

RICHARD ROE.

BOOKS RECEIVED

The Licensing Acts. By the late JAMES PATERSON, M.A., Barrister-at-Law. Sixtieth Edition. By F. MORTON SMITH, B.A., Solicitor, Clerk to the Justices for the City and County of Newcastle-upon-Tyne. 1952. pp. cxxii, 1679 and (Index) 201. London: Butterworth & Co. (Publishers), Ltd.; Shaw & Sons, Ltd. £2 17s. 6d. net.

Jones' Solicitor's Clerk. Part 1. By the late CHARLES JONES. Fourteenth Edition. Revised by F. W. BROADGATE. 1952. pp. x and (with Index) 389. London: Sir Isaac Pitman and Sons, Ltd. 15s. net.

Oyez Practice Notes, No. 13: Chancery Practice. Second Edition. By F. G. R. JORDAN, Solicitor. 1952. pp. (with Index) 98. London: The Solicitors' Law Stationery Society, Ltd. 7s. 6d. net.

Law and Practice of Marine Insurance. Second Edition. By HOWARD B. HURD, Honorary Member and Past Chairman of the Association of Average Adjusters, Member of the International Maritime Committee. 1952. pp. xxxiii and (with Index) 214. London: Sir Isaac Pitman & Sons, Ltd. 40s. net.

The State is at Your Service. Daily Express Legal Guide No. 3. By DEREK H. HENE (M.A. Cantab.), Barrister-at-Law, of the Inner Temple and the South-Eastern Circuit, with a Foreword by The Rt. Hon. VISCOUNT SIMON, P.C., G.C.S.I., G.C.V.O., O.B.E., Q.C. 1952. pp. 48. London: Express Newspaper, Ltd. 2s. net.

French-English English-French Dictionary of Legal Words and Phrases. Second Edition. By A. W. DALRYMPLE, M.A., Advocate. 1951. pp. v and 218. London: Stevens & Sons, Ltd. 21s. net.

Preparation for Professional Examinations. By J. H. BURTON, F.S.A.A., F.I.M.T.A., F.C.C.S., F.R.Econ.S. 1952. pp. 91. London: Gee & Co. (Publishers), Ltd. 10s. net.

Rating Practice and Procedure. By PERCY LAMB, Q.C., of Gray's Inn and the Middle Temple, Recorder of Rochester. 1951. pp. v and (with Index) 64. London: The Estates Gazette, Ltd. 9s. 6d. net.

Your Family and the Law. Thrift Books, No. 13. By ROBERT S. W. POLLARD. 1952. pp. 90. London: C. A. Watts & Co., Ltd. 1s. net.

Michael and Will on the Law Relating to Water. Ninth Edition. Supplementary Volume. By H. R. MCDOWELL, LL.B., Solicitor and Parliamentary Officer to the Metropolitan Water Board, and C. F. CHAMBERLAIN, of the Middle Temple, Barrister-at-Law, Assistant Parliamentary Officer to the Metropolitan Water Board. 1952. pp. xxii, 168 and (Index) 29. London: Butterworth & Co. (Publishers), Ltd. 30s. net.

Russell on the Law of Arbitration. Fifteenth Edition. By T. A. BLANCO WHITE, of Lincoln's Inn, Barrister-at-Law. 1952. pp. xxxviii and (with Index) 412. London: Stevens and Sons, Ltd. £3 10s. net.

Pollock's Law of Torts. Fifteenth Edition. By P. A. LANDON, M.A., M.C., Honorary Bencher of the Inner Temple; formerly Lecturer to The Law Society. 1951. pp. xliv and (with Index) 480. London: Stevens & Sons, Ltd. £3 3s. net.

The British Commonwealth. The Development of its Laws and Constitutions. General Editor, GEORGE W. KEETON.

Vol. 2. The Commonwealth of Australia. By G. W. PATON, M.A., B.C.L., with Specialist Editors. 1952. pp. xvi and (with Index) 355. London: Stevens & Sons, Ltd. £2 15s. net.

Vol. 6. The Republic of India. By ALAN GLEDHILL, M.A., I.C.S. (Rtd.), of Gray's Inn, Barrister-at-Law, formerly one of the Judges of the High Court at Rangoon. 1951. pp. xii and (with Index) 309. London: Stevens & Sons, Ltd. £2 5s. net.

Handbook of Child Law. Being the Fourth Edition of "Handbook for School Attendance Officers." By JOHN STEVENSON, Late Chief Superintendent of School Attendance Officers and Child Employment Inspectors of the Birmingham Education Authority, and LAURENCE HAGUE, Senior Administrative Assistant, formerly Superintendent of School Attendance Officers and Child Employment Inspector, City of Birmingham Education Committee. 1952. pp. xv and (with Index) 533. London: Sir Isaac Pitman & Sons, Ltd. 40s. net.

REVIEWS

Solicitors and Local Authorities. By A. V. RISDON, Planning Solicitor to the Exeter City Council, and J. R. FARRANT, B.A. (Oxon), Senior Assistant Solicitor to the City and County of the City of Exeter. 1952. London: Butterworth & Co. (Publishers), Ltd. £2 7s. 6d. net.

This is essentially a practice book, one that sets out to advise a solicitor what to do, and how to do it, to get the best for his client out of dealings with a local authority, which, in these days of planning and controls, must be many and varied.

The subjects covered include building leases of local authority's land, planning, compulsory purchase and conveyancing practice thereon, building licences, house purchase loans and improvement grants, repair notices and demolition orders, private street works, rights of way, drains and sewers, and local land charges.

The authors claim that the book is unusual, and so it is. The subject is presented not in narrative form but by means of a series of precedents of letters and other documents interspersed with what can, perhaps, best be described as

office notes on such matters as points to be considered in taking instructions in various proceedings and transactions, e.g., to object to a development plan, to engage in a planning appeal, to contest a planning enforcement notice or a compulsory purchase order, or to apply for a building licence.

The book has been carefully and accurately compiled; it is clearly the outcome of the author's practical experience, which is, perhaps, the best recommendation for any book. Once the reader has grown used to the somewhat unusual style and arrangement, the book should prove most valuable to him, and, although it appears to be addressed primarily to the solicitor in private practice, the precedents and notes are such that it should prove just as helpful to solicitors to local authorities. It can be fully recommended as an enterprising and helpful practical work.

Whitaker's Almanack, 1952. Eighty-fourth Annual Volume. 1951. London: J. Whitaker & Sons, Ltd. Complete edition 15s. net. Shorter edition (paper bound) 7s. 6d. Library edition 30s. net.

The 1952 Whitaker is the largest ever to be issued, running to 1156 pages, and it includes a General Election Supplement, setting forth the results of that event in great detail. But these triumphs, satisfying as they must be to the publishers, are as nothing to the annual triumph over uncertainty and plain (though excusable) ignorance that Whitaker represents. If we may be allowed, in the same breath in which we commend such a vastly informative and minutely precise volume, to indulge in the bad habit of guesswork, we would say that no one ever consults Whitaker but he is amazed at the sheer diversity of the facts at his command. It is easy to find your way about Whitaker, but he is missing a great deal who does not occasionally get deliberately and pleasurably lost in its fascinating pages. A book which has all the stern virtues of a universal work of reference and manages to be fun as well is indeed a masterpiece.

The Post Office London Directory for 1952. One hundred and fifty-third Annual Publication. London: Kelly's Directories, Ltd. £5 net.

The Post Office London Directory, as is well known, contains a wealth of information which it is impossible to obtain in the same form from any other individual source, and its value in time saved in the office must be equivalent to considerably more money than it costs. In addition to the three familiar sections, classified alphabetically, by trades and by streets, there are separate sections devoted to law, private residents, Parliamentary information, postal information, official information, City and municipal information, banking and other subjects. The large-scale street plan issued with the volume is itself of inestimable value, and the whole work is well arranged and copiously indexed to make reference easy.

CORRESPONDENCE

[*The views expressed by our correspondents are not necessarily those of* THE SOLICITORS' JOURNAL]

Termination of Agricultural Tenancies

Sir,—In "R.B.'s" note on forfeiture of agricultural holdings in your issue of the 26th January, 1952, it is observed that "effluxion of time in itself . . . cannot terminate a tenancy within the Act." May I suggest that one case in which it can is the case of a lease granted before 1st January, 1921, although it is probably unlikely that any such lease now exists.

Mr. Aggs, in the 10th edition of Jackson's Agricultural Holdings, submits that a tenancy "for one year certain and no longer" or "for two years less two days" would expire without notice to quit, and would consequently be outside the provisions of s. 24. Whether this contention is correct or not would seem to depend primarily on whether such a tenancy is "an interest less than a tenancy from year to year" or not. If it is, it is caught by s. 2 of the Act of 1948.

S. H. BATE.

Tamworth.

Sale of Houses to Sitting Tenants

Sir,—We were interested to read Messrs. Barrow & Smith's letter published in THE SOLICITORS' JOURNAL on the 2nd February last.

The negative covenant there referred to seems to be an ingenious attempt to avoid additional stamp duty, but we wonder whether it is really effective. Two points occur to us, first, it is thought that a court might hold that the covenant is void as being against public policy. One of the main objects of land legislation since the end of the last century has been to prevent land from becoming inalienable. Such a covenant tends to defeat this object.

Secondly, it occurs to us that the covenant to pay half the profit to the landlord in the event of a sale by way of liquidated damages may be a penalty and void as such. The landlord can have suffered no real damage, the only damages to which he would appear to be entitled are nominal damages for breach of the covenant, assuming, of course, that the covenant is otherwise valid.

We, too, look forward to having the views of your contributor on this interesting problem.

R. A. & C. P. HEPTONSTALL.

Goole.

Sir,—I was interested to read Messrs. Barrow & Smith's letter (Vol. 96, p. 76) which followed upon my article upon the above subject and which asked for my views upon its contents.

Messrs. Barrow & Smith's first method closely resembles the one I suggested, and I frankly find it difficult to controvert the stamp office's suggestion that it is in substance a provision for an increase in price in certain circumstances.

Their second method (negative covenant with liquidated damages) has apparently not attracted any adverse comment from the stamp office, although it appears to me that it may be in substance equally a provision for an increased purchase price. I do not doubt that this method will work perfectly soundly in the majority of cases but I suggest that it is open to two objections.

Firstly, the vendor's claim lies in damages only and is not charged upon the property. Hence, difficulty may be found in collecting the liquidated damages if the purchaser is insolvent or if he manages to spend the proceeds before the vendor catches up with him. In this connection it will be noted that there is nothing which can be registered under the Land Charges Act, 1925, so that the purchaser may resell without the knowledge of the vendor.

Secondly, if the purchaser cared to fight the matter the question might arise whether the liquidated damages are recoverable at all or are a penalty. In the *Dunlop Tyre Co.* case [1915] A.C. 79 at p. 87, Lord Dunedin said that a sum stated to be liquidated damages will be held to be a penalty if "the sum stipulated for is extravagant and unconscionable in amount in comparison with the greatest loss that could conceivably be proved to have followed from the breach."

Now the position is that V has sold to P and has taken a covenant that P will not resell for (say) two years. Suppose that such a covenant were taken without provision for liquidated damages. On a breach by P what possible damage could V show that he had suffered? How is he affected in any way? The most he could say would be "If I had not sold to you I could now have sold at a profit to your sub-purchaser" and that would surely be met with the answer "No you could not because I would not have vacated the premises" and in any case this does not seem to me to be the crucial question which is this—if in the absence of any provision for liquidated damages P says to V "How would you have been in the slightest degree better off if I had not sold in breach of my covenant?" I cannot see

what answer V can give. That being so, V would be entitled to nominal damages only, and if the only damage that could be recovered in the absence of a provision for "liquidated damages" is nominal then surely those "liquidated damages" are in the nature of a penalty.

For these reasons I prefer the method suggested by myself, even at the expense of extra stamp duty (which is usually paid by the purchaser).

G. BOUGHEN GRAHAM.

Lincoln's Inn, W.C.2.

Sale by Surviving Joint Tenant

Sir,—The two very interesting articles on sales by a surviving joint tenant (95 SOL. J. 828 and 96 SOL. J. 68) and the correspondence quoted have all proceeded on the assumption that the land being dealt with is unregistered. It may not therefore be out of place to consider how very much simpler the position is when the land is registered.

Two or more beneficial joint tenants will, of course, be entered on the register without any restriction requiring payment of capital money to two trustees. On the death of one or more of them leaving a sole surviving proprietor, such survivor will be able to exercise all the powers conferred by the Land Registration Acts and Rules on a proprietor of registered land, and a purchaser will be perfectly safe in paying capital money to him without any inquiry as to possible severance of the equitable joint tenancy. If, in fact, there has been a severance, the onus is on the party severing to ensure that the appropriate restriction is entered on the register. If he fails to do so, a purchaser is not affected.

Nor is the simplification limited to a beneficial joint tenancy. It not infrequently happens in the case of undivided shares that the entire beneficial interest vests in the sole surviving proprietor by bequest or purchase. In such a case a restriction will have been entered on the register, but application can be made to cancel it accompanied by evidence of the devolution of the deceased's undivided share. Once the restriction is cancelled a purchaser will again be in a position to pay capital money to the sole surviving proprietor, thus obviating any necessity for the appointment of a second trustee for sale.

T. I. CASSWELL.

Hampstead, N.W.3.

NOTES OF CASES

CHANCERY DIVISION

WILL: GIFTS FREE OF DEATH DUTIES: DUTIES CHARGEABLE ON DEATH OF TESTATRIX AND OF TENANTS FOR LIFE

***In re* Howell; Drury *v.* Fletcher**

Vaisey, J. 24th January, 1952

Adjourned summons.

By her will made 6th April, 1946, the testatrix devised a freehold house to her trustees "upon trust to pay to my niece [X] . . . the net income derived therefrom during her life and after her death in trust for her son . . . absolutely"; she made similar settled devises in favour of other beneficiaries. She then provided that "all devises given by this will or any codicil hereto (except the gift of residue) shall be enjoyed free of death duties," and gave the residue, "after paying any debts funeral and testamentary expenses and death duties", to her nieces absolutely. The court was asked to determine whether the direction to discharge the death duties referred only to the duties payable on the death of the testatrix or extended to the duties payable on the death of the tenants for life.

VAISEY, J., said that Harman, J., in *In re Shepherd* [1949] 1 Ch. 116, held that there was a presumption that a testator only intended to provide for the payment of duties arising on his death and to rebut it a clear intention to provide for future duties must be found in the will. He (Vaisey, J.) was not sure that he would have put it as strongly as a presumption, but he thought that there was a strong tendency against coming to a contrary conclusion, based partly on the argument *ab inconvenienti*, since it was awkward to hold up the distribution of the residue for a number of years. There was not in this case enough for him to depart from the conclusion reached in *In re Shepherd*. If testators desired their estates to be held up to meet future duties, they must say so in unmistakable terms. As there was no such expression in the present will, it had to be held that the direction applied only to duties payable on the death of the testatrix.

APPEARANCES: *J. H. A. Sparrow; Maurice Berkeley; Peter Foster* (*Winter & Co.*, for *Drury & Powis*, Clacton-on-Sea).

[Reported by CLIVE M. SCHMITTHOFF, Esq., Barrister-at-Law.]

ORTHOPÆDIC CLINIC: NOT HOSPITAL WITHIN NATIONAL HEALTH SERVICE ACT, 1946: "RECEPTION AND TREATMENT" OF PATIENTS

***In re* Couchman, deceased**

Danckwerts, J. 5th February, 1952

Adjourned summons.

The testator left a legacy of £100 and a share in the residue to the X Orthopædic Clinic, which was a voluntary institution operating as a unit of the British Red Cross in a hut which belonged to a Red Cross branch in the grounds of X Cottage Hospital. The clinic provided after-care treatment. The Minister of Health had approved a scheme under which the Y Orthopædic Hospital Management Committee was the committee charged with the management of X Orthopædic Clinic for the purposes of the National Health Service Act, 1946. Since vesting date (5th July, 1948) the Red Cross was no longer concerned with the activities of the clinic, which was managed by the Y Committee. The executors asked the court to determine who was entitled to the legacy and the share in the residue.

DANCKWERTS, J., said that the claim by the local branch of the British Red Cross failed because the bequest was not a gift to that branch, it was for the charitable purposes described in the will. The claim by the hospital management committee likewise failed because the clinic was not a hospital within the meaning of s. 79 of the Act of 1946, which defined a hospital as any institution for "the reception and treatment" of patients, including clinics "maintained in connection with" any such institution. The clinic was for the "treatment" of illness but he (the learned judge) did not think that it was for the "reception" of persons; "reception" meant taking people into a building and keeping them there, as was done in the ordinary case of reception into a hospital. Nor could it be said that the clinic was maintained "in connection" with a particular hospital. In the result, the funds constituted a charity which did not fail and would be carried out by means of a scheme that, in the circumstances, would be administered by the management committee.

APPEARANCES: *J. A. Armstrong* (*May, May & Deacon*, for *Lloyd & Son*, Leominster); *G. T. Hesketh* (*Edwin Coe & Calder Woods*, for *David Allen & Carver*, Hereford); *Skone James* (*Sharpe, Pritchard & Co.*, for *T. H. Waterhouse*, Edgbaston); *D. Buckley*, (*Treasury Solicitor*).

[Reported by CLIVE M. SCHMITTHOFF, Esq., Barrister-at-Law.]

KING'S BENCH DIVISION

HOUSING: RENT LIMITED BY BUILDING LICENCE

Duplex Settled Investments, Ltd. *v.* Worthing Corporation

Lord Goddard, C.J., Byrne and Parker, JJ.

24th January, 1952

Case stated by justices of Worthing.

The appellant landlords were the owners of a block of flats, which had been built subject to the provisions of a licence issued under a Defence Regulation, which contained the following conditions: "(2) the flats to be let at a rental not exceeding £85 per annum, exclusive of rates; (3) the owners to maintain and keep in repair the buildings free of charge to the tenants, and to . . . maintain the gardens . . . and such provisions to be incorporated in the tenancy agreements." The landlords let a flat to a tenant at a rent equivalent to £85 per annum: the tenancy agreement

also provided that the tenant was (1) to keep the interior in repair; (2) to cultivate and keep in good condition a garden; (3) to recoup the landlords for moneys laid out in effecting and maintaining insurance against fire. The expenses incurred by the tenant in meeting these obligations were assessed by a surveyor at £18. Section 7 (1) of the Building Materials and Housing Act, 1945, provides that "where a house has been constructed under the authority of a licence granted for the purpose of a Defence Regulation . . . and the licence . . . has been granted subject to any condition limiting . . . the rent at which it may be let, any person who . . . lets . . . the house at a rent in excess of the rent so limited shall be liable on summary conviction" to the penalties stated. By s. 7 (4): "Where a house is let for a consideration which consists wholly or partly of something other than the payment of a money rent . . . and it appears to the court that the whole consideration is capable of being expressed in terms of money, the court shall assess the total value of the consideration . . . and shall determine a rent which appears to the court to represent a benefit equivalent to the said value. . . ." By s. 7 (7) (*b*) the court may, where a person is convicted of letting a house at an excessive rent, "make such modifications of the terms and conditions of the letting as . . . are necessary for the purpose of securing that the rent payable . . . does not exceed the permitted rent." At the hearing of a summons against the landlords for letting the flat at an excessive rent, the justices held that the obligations on the part of the tenant constituted benefits to the landlords, and formed part of the consideration; and that the consideration was capable of being expressed in money, which they assessed at £12, making the rent £97 in all. They convicted the landlords, and acting under s. 7 (7) they amended the rent for the future to £73, leaving the offending covenants unaltered.

PARKER, J., delivering the judgment of the court, said that the landlords had contended that they acted under a claim of right, thus ousting the jurisdiction of the justices. As to that, no claim of right arose; further, as the Act provided only for summary procedure, if the landlords were right, no case could ever be dealt with by the court. It was next argued that the rent of £85 prescribed by the licence was referable to a lease under which the tenant, as was often the case, undertook interior repairs. But the licence could not be so construed: on its true construction the landlords were responsible for all repairs. The question as to the insurance premium was unarguable, and it could not be said that the maintenance of the garden was not of some benefit to the landlords. The obligations undertaken by the tenant could be assessed in money, as the surveyor's evidence showed; and if it was said that some of the expenditure did not constitute a "benefit" to the landlords, the justices had taken that into consideration by reducing the surveyor's figure to £12. Finally, the justices had jurisdiction under s. 7 (7) to modify the rent instead of the covenants. The appeal failed and would be dismissed.

APPEARANCES: *H. V. Lloyd-Jones*, K.C., and *L. F. Sturge* (*Mead, Sons & Bingham*); *Glyn-Jones*, K.C., and *S. Rees* (*Sharpe, Pritchard & Co.*, for *E. G. Townsend*, Town Clerk, Worthing).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

AGRICULTURAL SUB-TENANCY: EFFECT OF NOTICE TO QUIT TO HEAD TENANT

Sherwood *v.* Moody

Ormerod, J. 25th January, 1952

Action.

The plaintiff, the owner of a farm, on 10th October, 1949, gave the tenant a written notice to quit on 11th October, 1950. The tenant, who had sub-let the farmhouse and a portion of the land, on the same date gave a written notice to quit to the sub-tenant, informing him verbally only of the reason. Both tenant and sub-tenant served written notices under s. 24 (1) of the Agricultural Holdings Act, 1948, on their respective landlords. The local Agricultural Executive Committee, acting for the Minister of Agriculture and Fisheries, confirmed the notices to quit; the tenant did not appeal, and in due course went out of possession. The sub-tenant appealed to the Lands Tribunal, which reversed the decision of the Minister. The plaintiff then brought an action for possession, which was defended by the sub-tenant and two sub-sub-tenants who occupied portions of the farmhouse. Statutory Instrument No. 190 of 1948 provides by art. 9 (1) that the provisions regarding notice contained in s. 24 (1) of the Act of 1948 shall not apply to a notice to quit given by the tenant of an agricultural holding, who has been given notice to quit, to his sub-tenant, if the fact that he has been given such notice is stated in the notice given to the sub-tenant.

ORMEROD, J., said that it was agreed that at common law the notice to quit to the tenant, having been approved by the Minister, was conclusive against the tenant and all sub-tenants claiming under him. The question was, whether there was anything in the Act of 1948 or in the regulations made by the Minister which altered that position. The Act, by s. 26 (1) (*e*), authorised the Minister to make regulations for excluding the application of s. 24 (1) in relation to sub-tenancies and for enabling the Minister or the Lands Tribunal "where the interest of a tenant is terminated by a notice to quit, to secure that a sub-tenant will hold from the landlord on the like terms as he held from the tenant"; but nowhere in Statutory Instrument No. 190 had the Minister introduced language to "secure" such a result. It was contended that by virtue of the definition section, which provided that "'tenant' means the holder of land under a contract of tenancy, and includes . . . [a] person deriving title from a tenant" a sub-tenant had the same protection under the Act as a tenant; but that section contained the words "unless the context otherwise requires," and with regard to s. 24 the context clearly required that such a definition was inapplicable. Accordingly, as there was nothing in the Act or Regulations to alter the ordinary rule of law, the notice to quit to the head tenant was effective against the sub-tenant and his sub-sub-tenants, and there must be an order for possession against them. The latter were not protected by the Rent Acts: see *Cow* v. *Casey* [1949] 1 K.B. 474.

APPEARANCES: *Geoffrey Lawrence*, K.C., and *Alan Fletcher* (*Withers & Co.*); *David Karmel*, K.C., and *W. Hanbury Aggs* (*Thomas Eggar & Son*, for *Gunner, Wilson & Jerome*, Newport, I.o.W.).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

SURVEY OF THE WEEK

HOUSE OF LORDS

PROGRESS OF BILLS

Read First Time:—

Cinematograph Bill [H.L.] [5th February.

To extend and amend the Cinematograph Act, 1909, and, as respects cinematograph entertainments, to modify the enactments relating to music and dancing licences.

Read Second Time:—

Dentists Bill [H.C.] [5th February.

Read Third Time:—

Income Tax Bill [H.L.] [5th February.

HOUSE OF COMMONS

A. PROGRESS OF BILLS

Read First Time:—

Election Committee Rooms Bill [H.C.] [5th February.

To ensure the rights of tenants of leasehold dwellings to use rooms as committee rooms during Parliamentary or local government elections; and for purposes connected therewith.

Empire Settlement Bill [H.C.] [5th February.

To extend the period for which the Secretary of State may make contributions under schemes agreed under section one of the Empire Settlement Act, 1922.

Licensed Premises in New Towns Bill [H.C.] [5th February.

To repeal so much of the Licensing Act, 1949, as provides for State management of the liquor trade in new towns; to make provision as to the grant of new justices' licences, and the removal of justices' licences, for or to premises in new towns in England and Wales, and as to the grant of new certificates and the renewal of certificates in respect of premises in new towns in Scotland; and for purposes connected with the matters aforesaid.

B. DEBATES

Continuing the debate on the Second Reading of the **Defamation (Amendment) Bill**, Mr. F. P. BISHOP said he was glad to see

that the Schedule to the Bill dealt with reports of company meetings. They had always been a tricky subject for the newspapers because after the chairman's speech the shareholders, no doubt enjoying privilege on the occasion of the meeting itself, often said some pretty bright things about the board of directors. The public could not have an adequate report of this proceeding unless the remarks of the shareholders were at least summarised and given in addition to the carefully prepared report of the chairman. Some newspapers had always done that, although they knew the risks they were running in so doing. He thought the law should give the newspapers adequate protection in discharging the duty which they owed to the public. Mr. Bishop regretted that no limit was placed on the damages which juries could award in defamation cases. They had powers which no judge in a criminal case possessed, i.e., they could impose penal damages, not determined by the plaintiff's loss but by the jury's deliberate intention to punish the defendant, and there was absolutely no limit on the amount which they could award if they did not like him. The Court of Appeal should be given power to review the damages without it being necessary to go to the extreme length of a new trial.

Sir LYNN UNGOED-THOMAS thought that, whilst some of the Bill's provisions were beneficial, to others there were serious objections. There were also omissions of provisions suggested by the Porter Committee which would be of great assistance to plaintiffs. He thought there was a real danger that the Bill would weight the law too heavily in favour of the defendant. They had heard a great deal of the freedom of the Press, but its great power must also be borne in mind. It required very great courage for a politician to stand up to the Press of to-day. Due to the fact that newspapers competed for advertisements and these depended on circulation, there was a direct incentive to sensationalism and to attack privacy. The safeguards against this tendency were only the law of defamation—the other safeguard which the Royal Commission on the Press had recommended, namely, a Press Council to enforce professional standards, still did not exist.

Coming to specific clauses, Sir Lynn Ungoed-Thomas said cl. 4, which dealt with justification, was both dangerous and unnecessary. The clause contemplated separate and distinct defamatory charges. That meant separate libels and separate justifications. If there was no justification for one charge surely the plaintiff would be entitled to succeed on it. There was no answer to that argument either in logic or in justice. The solution which he suggested was that the success of justification on the justifiable charges should affect the question of damages on the unjustifiable charges and should not operate to make what would otherwise be a libel, and would be a libel still under separate proceedings, into something not libellous at all. The reasons behind cl. 4 were procedural reasons—it was suggested that the verdict on the unjustifiable charge carried the general costs of the action and, consequently, if the defendant admitted liability in the course of the proceedings on one of the several charges and paid money into court, then, if the plaintiff took it out, he was entitled to the costs of the action. This should be met by procedural reform—not by a change in the substantive law. As it stood the clause might lead to minor charges being thrown in with major ones where the minor charges were merely subsidiary.

Clause 8 dealt with joint publications and under it a publisher was to be protected against action for publication by him of a malicious defamatory statement provided he was not negligent. The simple point of principle here was: where publisher and victim are both innocent, who should bear the damage suffered by the victim—the victim or the publisher? Surely the publisher should pay. He had the choice of publishing or not; he stood to profit by the publication—that was why he published.

Clause 11 he considered to be disastrous. It introduced a new principle into the law of defamation. As it stood he was doubtful whether it was intended that character should be the basis of defamation, although reputation had always been the basis hitherto. If this was so it was a fundamental change of the whole basis of the law of defamation by a side-wind through a clause which purported to deal with damages only. Again, the clause quite clearly put the plaintiff's character in issue, which in itself was a novel and dangerous thing. His whole past life was in issue including incidents of a kind entirely different from the subject-matter of the defamation complained of. The present position was that there could be cross-examination to test the credibility of a plaintiff; but that was very different from putting the plaintiff's character in issue in an action on a question of damages. Evidence-in-chief could then be called, which could not be done under the present right of cross-examination. Cross-examination was governed by the lawyer's professional code of conduct and was limited in scope. Again, undue cross-examination of the plaintiff was apt to inflate the damages. The plaintiff might not want his or her irrelevant past dragged up and might thus be blackmailed into dropping the action.

The ATTORNEY-GENERAL said that in regard to cl. 3 it was a difficult matter to conjecture how much a defendant would have to show before he could be said to have discharged the obligation of showing that he had not been negligent. Again, the Bill did not deal at all with trade libel or slander of goods. At present it was necessary to prove malice and special damage. It had been said that to show that damage must inevitably occur was to show special damage. He hoped the Bill would ultimately contain the Porter Committee's recommendation on this point.

Sir FRANK SOSKICE said he shared the apprehensions of Sir Lynn Ungoed-Thomas as to cl. 11. It seemed to him to be founded on an altogether wrong approach. A judge or jury might have to take into account against a plaintiff whose reputation was admittedly good something done long ago, the memory of which had quite been wiped out. The whole point of the action was to protect the reputation of the plaintiff, not to expose him to the resurrection of long-forgotten misdeeds. He also agreed with Sir Lynn as to cl. 4. As to cl. 3 (unintentional defamation), perhaps an apology was sufficient in the case of newspaper libel, but what about a book which, perhaps, became a best-seller and would go on being read after many generations? Should there not be provision for steps to prevent further publication?

[1st February.

C. QUESTIONS

SHOP AND BUSINESS PREMISES (TENANCIES)

Mr. LESLIE HALE asked the Attorney-General what steps it was proposed to take to provide security of tenure for occupants of shops and business premises. Sir LIONEL HEALD in reply said it was fully appreciated that further provision would have to be made before the expiry of the Leasehold Property (Temporary Provisions) Act, and the Government was carefully considering the matter but could give no undertaking as to when legislation would be introduced. [4th February.

LEASEHOLD REFORM

In reply to a number of questions, the ATTORNEY-GENERAL said he was not in a position to make a statement with regard to the Government's intentions to amend the law of leaseholds. It was appreciated that the present Act expired in the mid-summer of 1953 and that action would have to be taken in plenty of time before that date. [4th February.

INTESTACY LAW

In reply to a question as to when he proposed to amend the law as to intestacy, the ATTORNEY-GENERAL said there was already before the House a Private Member's Bill which had been appointed for 28th March, the purpose of which was broadly to give effect to the recommendations of the Committee under the chairmanship of Lord Morton of Henryton, whose report was published last July. He could not yet indicate the Government's attitude to the Bill, but it would receive careful consideration. [4th February.

CIRCUIT COURT JUDGES (EXPENSES)

Sir LIONEL HEALD stated that since 1884 allowances at the rate of £7 10s. a day had been paid to H.M. Judges going circuit in England and Wales for every day on which they were necessarily absent from London. [4th February.

CONTROLLED HOUSES (REPAIRS)

Mr. MACMILLAN said he was not yet in a position to make any statement regarding the proposed review of the Rent Restrictions Acts. Mr. Macmillan did not reply to a request that he would give special attention to the need for making better provision to meet the cost of keeping controlled premises in a state of repair. [5th February.

SMALL DWELLINGS ACQUISITION ACTS

Mr. DAVID RENTON asked the Minister of Housing and Local Government whether he was aware of the hardship caused when the rate of interest payable under the Small Dwellings Acquisition

Acts was altered after the date of execution of the mortgage deed, and whether he would introduce legislation for the giving of six months' notice. Mr. MACMILLAN said the rate of interest under these Acts was required by the Housing Act, 1935, to be at a rate one-quarter of one per cent. in excess of the rate fixed for loans to local authorities out of the Local Loans Fund one month before the date on which the terms of the advance were settled. He could hold out no hope of legislation on this matter. [5th February.

STATUTORY INSTRUMENTS

Accrington District Water Order, 1952. (S.I. 1952 No. 180.)

Act of Sederunt (Reserve and Auxiliary Forces (Protection of Civil Interests)), 1952. (S.I. 1952 No. 117 (S.9).) 8d.

Agriculture (Calculation of Value for Compensation) Amendment Regulations, 1952. (S.I. 1952 No. 170.)

Air Navigation (General) (Second Amendment) Regulations, 1952. (S.I. 1952 No. 171.) 5d.

Aliens Order, 1952. (S.I. 1952 No. 160.)

Bedwellty Water Order, 1952. (S.I. 1952 No. 187.) 5d.

Carriage by Air (Non-international Carriage) (United Kingdom) Order, 1952. (S.I. 1952 No. 158.) 8d.

Chocolate, Sugar Confectionery and Cocoa Products (Amendment) Order, 1952. (S.I. 1952 No. 211.)

Colonial Prisoners Removal (Malay States) Order, 1952. (S.I. 1952 No. 162.)

Death Duties (Northern Ireland) (Relief against Double Duty) (North Borneo) Order, 1952. (S.I. 1952 No. 156.)

Death Duties (Relief against Double Duty) (North Borneo) Order, 1952. (S.I. 1952 No. 157.)

East Worcestershire Water Order, 1952. (S.I. 1952 No. 189.)

Export of Goods (Control) Order, 1951 (Amendment No. 5) Order, 1952. (S.I. 1952 No. 132.) 5d.

Flour (Amendment) Order, 1952. (S.I. 1952 No. 209.)

Flour Confectionery (Revocation) Order, 1952. (S.I. 1952 No. 208.)

Foreign Marriage (Amendment) Order in Council, 1952. (S.I. 1952 No. 159.)

Foul Brood Disease of Bees Order, 1952. (S.I. 1952 No. 138.) 5d.

Hong Kong Royal Naval Volunteer Reserve Order, 1952. (S.I. 1952 No. 155.)

Import Duties (Drawback) (No. 2) Order, 1952. (S.I. 1952 No. 173.)

Iron and Steel Distribution (Amendment No. 1) Order, 1952. (S.I. 1952 No. 172.) 6d.

Lands Tribunal (Statutory Undertakers Compensation Jurisdiction) Order, 1952. (S.I. 1952 No. 161.)

This order transfers to the Lands Tribunal jurisdiction under the Town and Country Planning Act, 1947, covering disputes as to compensation to statutory undertakers on the compulsory purchase of, or the imposition of restrictions on the use of, their land.

Live Poultry (Restrictions) Order, 1952. (S.I. 1952 No. 200.) 6d.

Maintenance Orders (Facilities for Enforcement) (Newfoundland and Prince Edward Island) Order, 1952. (S.I. 1952 No. 154.)

National Insurance (Reciprocal Agreement with Republic of Ireland for Sickness and Maternity Benefit) Order, 1952. (S.I. 1952 No. 164.) 5d.

Prices of Goods (Price-Regulated Goods) (Revocation) Order, 1952. (S.I. 1952 No. 212.)

Reserve and Auxiliary Forces (Industrial Assurance and Friendly Societies) (Channel Islands) Order, 1952. (S.I. 1952 No. 165.)

Reserve and Auxiliary Forces (Industrial Assurance and Friendly Societies) (Isle of Man) Order, 1952. (S.I. 1952 No. 166.)

Restriction of Ribbon Development (Temporary Development) (End of War Period) Order, 1952. (S.I. 1952 No. 167.)

Soap (Revocation) Order, 1952. (S I. 1952 No. 210.)

Stopping up of Highways (Cheshire) (No. 1) Order, 1952. (S.I. 1952 No. 184.)

Stopping up of Highways (Herefordshire) (No. 1) Order, 1952. (S.I. 1952 No. 185.)

Stopping up of Highways (London) (No. 1) Order, 1952. (S.I. 1952 No. 182.)

Stopping up of Highways (London) (No. 2) Order, 1952. (S.I. 1952 No. 183.)

Stopping up of Highways (London) (No. 3) Order, 1952. (S.I. 1952 No. 191.)

Stopping up of Highways (West Sussex) (No. 1) Order, 1952. (S.I. 1952 No. 181.)

Superannuation (Local Government, Commonwealth and Foreign Service) Interchange Rules, 1952. (S.I. 1952 No. 133.) 6d.

Superannuation (Reserve and Auxiliary Forces) Rules, 1952. (S.I. 1952 No. 135.) 5d.

Teachers' Superannuation (National Service) Amending Rules, 1952. (S.I. 1952 No. 137.)

Draft Teachers' Superannuation (Reciprocity with Southern Rhodesia) Revoking Scheme, 1952.

Telephone (Channel Islands) Order, 1952. (S.I. 1952 No. 163.)

Utility Cloth and Utility Household Textiles (Distributors' Maximum Prices) (Amendment) Order, 1952. (S.I. 1952 No. 128.) 8d.

Utility Curtain Cloth and Utility Upholstery Cloth (Distributors' Maximum Prices) Order, 1952. (S.I. 1952 No. 129.) 6d.

Utility Gloves (Distributors' Maximum Prices) Order, 1952. (S.I. 1952 No. 192.) 5d.

Utility Oilskins (Distributors' Maximum Prices) Order, 1952. (S.I. 1952 No. 131.) 5d.

Utility Woven Rayon Apparel Cloth (Distributors' Maximum Prices) Order, 1952. (S.I. 1952 No. 130.) 8d.

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 102-103, Fetter Lane, E.C.4. The price in each case, unless otherwise stated, is 4d., post free.]

POINTS IN PRACTICE

Questions from solicitors who are REGISTERED ANNUAL SUBSCRIBERS are answered without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 102-103 Fetter Lane, E.C.4, and contain the name and address of the subscriber, and a stamped addressed envelope.

Mortgage—STATUTORY POWER OF LEASING NOT TO BE EXERCISED WITHOUT CONSENT OF MORTGAGEE—VALIDITY OF PROPOSED AGREEMENT FOR LEASE

Q. The owner of freehold property mortgaged to a building society desires to grant a lease of part of the premises. The mortgage deed contains a clause that no lease made by the mortgagor of the property during the continuance of the security shall have effect by force or virtue of s. 99 of the Law of Property Act, 1925, unless the society shall consent in writing thereto. The consent of the building society to a proposed lease of twenty-one years has been sought and refused. Apart from the statutory power of granting leases which would be binding on the mortgagee, what common-law power has the mortgagor of granting a lease not binding on the mortgagee? Can the mortgagor grant an agreement for a lease for a term not exceeding three years with an option to extend the term for a further three years?

A. Before 1926 a mortgagor could not grant leases binding on the mortgagee, since the latter had the legal estate and the mortgagor had only an equitable interest. Since 1925, although the mortgagor has a legal estate, the position is still the same, since, to be valid as against the mortgagee, the term would have to be longer than that vested or deemed to be vested in the mortgagee and would only take effect in reversion thereon. A mortgagor has, quite apart from statute, full power to grant leases or agreements for leases which are not binding on the mortgagee, and in *Iron Trades Employers' Insurance Association, Ltd.* v. *Union Land and House Investors, Ltd.* [1937] Ch. 313 it was held that to do so was not a breach of a covenant not to exercise the statutory power of leasing without the consent of the mortgagee. The proposed agreement for lease will not, therefore, be binding on the mortgagee, but would not, in our opinion, be a breach of covenant, in which event the mortgagee's power of sale would not thereby become exercisable.

Partnership—One Partner Insuring Life of Other to Provide Capital to Purchase Partnership Share on Death

Q. Can you refer me to a precedent of a deed whereunder a partner, having taken out a life assurance policy on his own life, for an amount equivalent to his estimated capital in the business, assigns such policy to his partner, to provide means whereby such partner can purchase the share of the first partner in the business upon his decease? The second partner would make the like arrangements with the first partner in respect of a life policy on the second partner's life. The partners also contemplate a proviso whereby the policy on the life of the surviving partner reverts to him on the death of the first of the partners.

A. We have not been able to find in any of the standard books of precedents any form which can be adapted to the somewhat specialised requirements of our subscriber. In our opinion, the best course will be to deal with the matter by way of a trust. Both policies could be assigned to trustees, as to the policy on the life of partner A, upon trust for partner B, but if partner B shall die in the lifetime of partner A, then upon trust for partner A, and as to the policy on the life of partner B, upon trust for partner A, but if partner A shall die in the lifetime of partner B, then upon trust for partner B. The deed should contain covenants on the part of each partner to maintain the premiums payable in respect of the policy on the life of the other. If both policies are of equivalent value and the assignment of one policy is made in consideration of the assignment of the other, it would appear that no duties will be payable on the death of either partner. As, however, the premiums are not payable by either partner in respect of a policy on his own life they will not qualify for income tax relief under s. 26 of the Finance Act, 1920, nor can they be deducted as an expense of the partnership business.

NOTES AND NEWS

Honours and Appointments

The Master of the Rolls has appointed Mr. A. S. Diamond to be a master in the Queen's Bench Division to fill the vacancy caused by the death of the late Master Horridge.

The Board of Trade have appointed Mr. Norman Saddler to be assistant official receiver for the bankruptcy district of the county courts of Manchester, Salford, Ashton-under-Lyne and Stalybridge, Bolton, Oldham, Rochdale and Stockport; for the bankruptcy district of the county courts of Preston, Blackpool, Blackburn and Burnley; and also for the bankruptcy district of the county courts of Hanley and Stoke-on-Trent, Crewe and Nantwich, Macclesfield, Stafford, Shrewsbury and Newtown; and Mr. R. W. F. Pagan to be assistant official receiver for the bankruptcy district of the county courts of Canterbury, Rochester and Maidstone.

Personal Notes

Colonel G. S. Field, solicitor, has been elected president of Reading Amateur Regatta.

Dr. Herbert Woodhouse, Clerk of the Peace for the City of Hull, has announced his retirement from that office on 18th February, at the age of 92.

Miscellaneous

ROBES. COURT MOURNING

The General Council of the Bar announce that they consider it desirable that during the period of Court Mourning which will continue until 1st June, 1952, junior counsel as well as Queen's Counsel should wear mourning bands.

A university lecture in laws on "The Structure and Main Divisions of French Law as opposed to English Law" will be given by Professor Rene David, Professor of Comparative Civil Law, University of Paris, at King's College, Strand, W.C.2, at 5.30 p.m., on Wednesday, 27th February, 1952. The chair will be taken by Professor R. H. Graveson, Professor of Law and Dean of the Faculty of Laws in the University of London.

A course of two special university lectures in laws on "The Conseil d'Etat and the Protection of the Liberty of the Individual" will be given by His Excellency the French Ambassador, at the University of London Senate House (entrance from Russell Square or Malet Street, W.C.1), at 5.30 p.m., on 29th February and 14th March, 1952. Admission to all the above lectures is free, without ticket.

COUNTY OF GLOUCESTER DEVELOPMENT PLAN

Mr. A. D. Parham, F.R.I.B.A., F.R.I.C.S., M.T.P.I., will hold a public local inquiry at the Council Chamber, Shire Hall, Gloucester, at 10.30 a.m., on Wednesday, 20th February, 1952, into objections and representations received by the Minister of Housing and Local Government in respect of the above-mentioned development plan submitted to him under s. 5 (1) of the Town and Country Planning Act, 1947.

Wills and Bequests

Mr. E. H. Middlebrook, solicitor, of Redhill, formerly of Leeds, left £5,767 (£3,681 net).

Mr. F. W. Wigglesworth, solicitor, of Manchester, left £14,499 (£13,909 net).

OBITUARY

MR. E. P. BEALE

Mr. Edmund Phipson Beale, solicitor, of Newhall Street, Birmingham, died on 5th February, aged 79. He was admitted in 1901 and was Pro-Chancellor of Birmingham University from 1939 to 1947 and for many years president of the Birmingham Festival Choral Society.

MR. P. D. BOTTERELL

Mr. Percy Dumville Botterell, retired solicitor, formerly of St. Mary Axe, London, E.C.3, has died at the age of 71. He was admitted in 1906 and retired in 1945.

MR. S. D. MOORWOOD

Mr. Stanley Duffield Moorwood, retired solicitor, of Sheffield, died on 2nd February, aged 68. He had retired in 1925, but from 1940 to 1948 came out of retirement to assist two Sheffield firms during the absence of the partners on war service.

MR. F. S. THIRLBY

Mr. Frank Stuart Thirlby, solicitor, of Derby, has died at the age of 82. He was admitted in 1891.

SOCIETIES

Readers are reminded that a centenary meeting of the Lawyers' Christian Fellowship will be held on Wednesday, 20th February, at 6.30 p.m., in the hall of Westminster Chapel, Buckingham Gate, S.W.1. The chair will be taken by Lord Justice Denning.

The Solicitors' Articled Clerks' Society will hold a reading from Shaw's plays, in which members are asked to take part, on 25th February, at 6 p.m., at The Law Society's Hall.

The Mansfield Law Club of the City of London College announce that a lecture entitled "The Banker and the Law" will be given by Mr. Maurice Megrah, Barrister-at-Law, Secretary of the Institute of Bankers, on 21st February.

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